

Red represents HSPA
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ARKANSAS

PERMIT OF APPROVAL

RULEBOOK

PUBLISHED BY THE
ARKANSAS HEALTH SERVICES PERMIT AGENCY
ON BEHALF OF THE
ARKANSAS HEALTH SERVICES PERMIT COMMISSION

December 2012

Approval Date,

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HSC Regulation 001. Health Services Permit Commission Policies and Procedures

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SECTION I. INTRODUCTION

A. Organization

Section 1. The Arkansas Health Services Permit Commission, hereinafter referred to as the Commission, and the Arkansas Health Services Permit Agency, hereinafter referred to as the Agency, are governed by Ark. Code Ann. § 20-8-101 et seq.

Section 2. The administrative offices for the Commission are located at Freeway Medical Tower, 5800 West 10th Street, Suite 805, Little Rock, Arkansas.

B. Officers

Section 1. Number. Officers of the Commission shall be a Chair and a Vice Chair.

Section 2. Terms of Office. The terms of the Commission Chair and Vice Chair shall be for one year. Officers may succeed themselves.

Section 3. Chair. The Chair shall have general supervision and management of the affairs of the Commission subject to the control of the Commissioners. He or she shall chair all meetings of the Commissioners; and perform all duties incident to the office of the Chair and all such other duties as from time to time may be assigned by the Commissioners.

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Section 4. Vice Chair. The Vice Chair shall in the absence or disability of the Chair, perform the duties and exercise the powers of such office. The Vice Chair shall perform such other duties and have such other powers as the Chair or the Commissioners may from time to time prescribe.

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C. Meetings

Section 1. Notice of Meetings. Formal notice of regular quarterly meetings should be communicated to Commissioners at least 10 working days prior to the meeting and additionally, to the news media and those who formally request notice from staff. The agenda for the meeting should be approved by the Chair and provided to the Commissioners, along with supporting materials, in sufficient time to permit review prior to a regular quarterly meeting.

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Section 2. Special Meetings. Special meetings of the Commission may be required

from time to time. Such meetings are subject to call of the Chair, the Vice Chair, or three or more Commissioners. The call to a special meeting should state the location and time, and the subject matter to be covered at such meeting. Commissioners may attend special meetings via tele or e-conferencing, if the service is available. The call to a special meeting should be provided to Commissioners at least 24 hours prior to the meeting.

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Section 3. Quorum and Manner of Action. A quorum shall be not less than five of the duly appointed Commissioners of the Commission. All actions of the Commission shall be decided by a simple majority of the Commissioners present and voting. No action may be taken without four votes for or against a motion. No proxy voting permitted.

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Section 4. Robert's Rules of Order. Unless otherwise covered by the Policies and Procedures of the Commission, the latest edition of Robert's Rules of Order shall govern the conduct of any meeting.

Section 5. Written Minutes. The minutes of meetings shall be prepared and kept by Agency staff and written copies mailed to Commissioners.

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D. Committees of the Commission

Section 1. The Chairperson may establish and create from time to time such committees as shall be necessary to carry out the affairs and further the purposes of the Commission. The Commission may have standing committees, ad hoc committees, or any other committees determined by the Chairperson. The Chairperson shall appoint the Commissionership to all committees.

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E. Conflict of Interest

Section 1. Announcing a Conflict of Interest. No Commissioner shall use such Commissionership for purposes, motivated by private gain, including gain for organizations or institutions with which the individual is associated in any capacity. Annually a disclosure statement shall be filed with the Agency listing all professional interests in the health field; any financial interest in the health industry; and any fiduciary interest held in a health institution, organization, or agency. There shall be a conflict of interest when the Commissioner or his/her organization or institution is the applicant or is a party to the adjudication process. When a conflict arises for a Commissioner in the course of business of the Commission, the Commissioner should declare the conflict.

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Section 2. Voting Abstention. Any Commissioner who declares a conflict of interest, or who is found to have a conflict should neither participate in debate nor vote on the issue in question, except a Commissioner having a conflict may present comments or testimony on behalf of his or her own interests or organization.

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SECTION II. DEFINITIONS

A. "Affected Person" - includes, at a minimum, the Applicant, appropriate state agencies, any person residing within the proposed service area or any person who regularly uses health care facilities within the proposed service area who has notified the Agency in writing requesting notification of the review, health care facilities located in the service area in which the project is proposed to be located, and legal representatives of such persons.

B. "Agency" - the Health Services Permit Agency

C. "Applicant" means the party applying for a new Permit of Approval or holding an existing a Permit of Approval

D. "Assisted Living Facility" means any building or buildings, section or distinct part of a building, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator. Assisted living facility includes those facilities, which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents.

E. "Commission" - the Health Services Permit Commission

F. "Commissioner" - a duly appointed member of the Health Services Permit Commission.

G. "Conversion of Services" - except for conversion of an RCF to an ALF, an alteration of the category of services offered by a Health Facility.

H. "Director" - the director of the Health Services Permit Agency.

I. "Health Agency of Health Agencies" - a "home health care services agency" as defined by ACA Section 20-10-801, the Home Services Act or a Hospice agency, as defined by ACA Section 20-7-117.

J. "Health Facility or Health Facilities" - "a Long Term Care Facility" and inpatient Hospice Facilities, ICF-MR, PRTF, RCF, and ALF. The terms "Health

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Facility” or “Health Facilities” does not mean a “hospital”, as defined by and licensed pursuant to ACA Section 20-9-201(3) the Hospital and Health Facilities Licensure Act. Nothing in the Act or these regulations shall be deemed to require a Permit of Approval for or otherwise regulate the licensure of in any manner of a hospital except when a hospital seeks to add long-term care beds or convert acute beds to long term care beds or add or expand home health services. The term "health facility" does not include offices of private physicians, outpatient surgery or imaging centers, or establishments operated by the federal government or any agency thereof, or free-standing radiation therapy centers, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination.

Comment [HSPA6]: The Agency has no objections on this page.

K. “Home Health Agency” – any person, partnership, association, corporation or other organization whether public or private, proprietary or non-profit that provides home health care services. (See “Home Health Services”)

L. “Home Health Services” - the providing or coordinating of acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or by other therapeutic services such as physical therapy, occupational therapy, speech therapy, home health aide or personal services in a client's residence. In order to be subject to Permit of Approval review such services must meet the definitions contained in Act 956 of 1987.

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M. “Hospice” or “Hospice program” means an autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and home-like inpatient care for the terminally ill patient and family, and which employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement. The care shall be available twenty-four (24) hours a day, seven (7) days a week, and provided on the basis of need, regardless of ability to pay.

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N. “Hospice Facility”.... means a

O. “Intermediate Care Facility for the Mentally Retarded” (ICF-MR)

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a. ICF-MR 16 beds or more - a facility with sixteen (16) or more beds that provides in a protective residential setting, diagnosis, active treatment and rehabilitation of persons with mental retardation or persons with related conditions. This includes both public and

privately operated ICF-MRs.

b. ICF-MR 15 beds or less - a facility with from four (4) to fifteen (15) beds that provides in a protective residential setting, diagnosis, active treatment and rehabilitation of persons with mental retardation or persons with related conditions.

Comment [HSPA8]: The Agency has no objections on this page. Letter U. "Opponent" means is defined by the Agency.

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P. "Life Care Facility" - "Life care" means continuing care as defined in Arkansas Code 23-93-103(2) except that no additional charges are made for nursing care or personal care beyond those charged all residents of the facility who are not receiving nursing care or personal care services.

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Q. "Long term care" - means non-acute care provided over a 24-hour period for 25 or more consecutive days.

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R. "Long Term Care Facility" - as defined by ACA Section 20-10-101(8), the Long Term Care Facilities and Services Act, means a nursing home, residential care facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care.

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S. "Medical Care" - means the services that are performed at the
i. direction of a physician in behalf of patients by physicians,
ii. nurses and other professional and technical personnel.

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T. "Nursing Home" - institution, or other place for the reception,
i. accommodation, board, care, or treatment of more than three (3) unrelated individuals, who, because of physical or mental infirmity are unable to sufficiently or properly care for themselves, and for which reception, accommodation, board, care, and treatment, a charge is made. The term "Nursing Home" shall not include the offices of private physicians and surgeons, boarding homes, or hospitals, or institutions operated by the Federal Government.

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U. "Opponent"- A person who opposes an application in the review cycle.

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V. "Permit of Approval" - a permit issued by the Commission, through the Agency, to an individual, organization or health care facility approving a health care project subject to review under Act 1800 of 2001, and the rules of the Commission.

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W. "Person" - an individual, a trust or estate, a partnership, corporation (including associations, joint stock companies, and insurance companies), the State, or a political subdivision or instrumentality (including a municipal

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corporation) of the State, or any legal entity recognized by the State.

Comment [HSPA9]: The Agency has no objections on this page. Letter DD. "Review Cycle" means is defined by the Agency.

X. "Personal Care" - means services, which are, defined as medically prescribed tasks pertaining to a person's functional abilities, which enable the person to be treated on an outpatient basis rather than on an inpatient basis. Personal care is in no way to be considered medical care.

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Y. "Physician" - a doctor of medicine or osteopathy legally authorized by the State to practice medicine and surgery.

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Z. "Population of a county" - the population of a county will be based on the most recent Federal census unless circumstances are such, that the Commission feels it should look beyond the Census. A statewide planning agency should be utilized which will be the Bureau of Census designee.

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AA. "Post-Acute Head Injury Retraining and Residential Care Facilities" - a building, or group of buildings if located contiguously and operated jointly, used or maintained to provide, for pay, Retraining and Rehabilitation for three (3) or more individuals who are disabled on account of Head Injury and who are not in present need of in-patient diagnostic care in a hospital or related institution. (Rules and Regulations for Post-Acute Head Injury Retraining and Residential Care Facilities", OLTC, DHS)

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BB. "Psychiatric Residential Treatment Facilities (PRTF) - 24-hour psychiatric residential treatment establishments with permanent facilities (other than a psychiatric inpatient hospital) which provides a structured, systematic therapeutic program of treatment, under the supervision of a psychiatrist, for emotionally disturbed children and/or adolescents, six to twenty-one years of age, grouped in an age appropriate manner.

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CC. "Residential Care Facilities" - a building or structure which is used or maintained to provide for pay on a 24-hour basis a place of residence and board for 3 or more individuals whose functional capabilities have been impaired but do not require hospital or nursing home care on a daily basis, but could require other assistance in activities of daily living.

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DD. "Review Cycle" - a quarterly review process when the completed application is submitted into a cycle.

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EE. "Tangible assets" - A tangible asset for the purpose of transferring a permit, legal title and right of ownership is property that may be felt or touched, and is necessarily corporeal, although it may be either real or personal.

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SECTION III. SCOPE OF REVIEW

Comment [HSPA10]: The Agency has no objections on this page.

The Agency (under the direction of the Commission or appropriate Court) will issue, deny or withdraw Permits of Approval. Using the Commission's rules and procedures, the Agency may exempt appropriate projects from review. Each recommendation of the Agency must be based on the completed application and its relationship to adopted standards and criteria. Each review decision of the Commission must be consistent with adopted standards, criteria and the record of the review.

A. PROJECTS REQUIRING PERMIT OF APPROVAL REVIEW INCLUDE BUT ARE NOT LIMITED TO:

1. Facility Construction

(a) All proposals for conversion of services or (b) alteration or renovation or construction of Assisted Living, inpatient Hospice Facilities, Nursing Home, PRTF, Residential Care Facility, and Intermediate Care Facilities for the Mentally Retarded having an associated capital expenditure of \$1,000,000 or more.

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2. Additional Beds

Unless exempted by the Act or by the Commission, all Health Facilities seeking to add new Long Term Care (LTC) beds or otherwise expand LTC bed capacity shall apply for a Permit of Approval.

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3. Home Health Services

Unless exempted by the Act or by the Commission, all providers seeking to add home health services or expand existing home health service areas shall apply for a Permit of Approval. This includes changes in license designation.

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4. Hospice Agencies

Unless exempted by the Act or by the Commission, all providers seeking to add Hospice Services or expand existing Hospice service areas shall apply for a Permit of Approval.

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B. PROJECTS REQUIRING APPROVAL BY THE COMMISSION:

1. Movement of Existing LTC beds ---

Any movement of Health Facility beds from one site to another site within the service area must be approved by the Commission. The applicant should submit the request in writing to the Agency. Applicants shall advise the Commission whether the project will require construction or renovation and any proposed movement of beds is subject to the time limitations in Section VI.A and the reporting requirements of Section VI.B of the Commission's Procedures. Failure to comply with these requirements will result in the withdrawal of permission to move the beds. Upon notice by the Applicant, or withdrawal of permission to move the beds, the beds shall remain at the original site with no further action required.

2. Movement of Site Location of Permit of Approval ---

Any movement of a site location for a project approved by the Commission for an existing Permit of Approval is subject to review. The applicant shall submit a request to the Agency in writing, detailing all information required in the original application regarding a site, the reasons for relocating the site from the original application approved, any additional costs associated with the relocation, and the time remaining for completion under various rules and regulations of the Commission regarding implementation of a Permit of Approval. The Commission, at its next regularly scheduled meeting, must approve the relocation before site location change is made. The relocation shall not extend the deadline for implementation of a Permit of Approval.

3. Transfer of Permit of Approval, legal title, or right of ownership –

A Permit of Approval may only be transferred if the entity presently holding the permit, legal title, or right of ownership has tangible assets of at least two thousand five hundred dollars (\$2,500) that will be transferred with the permit, legal title or right of ownership, and then only with the approval of the Commission. The applicant must provide proof of tangible assets. Any person requesting approval to receive a Permit of Approval via transfer from an existing permit holder must submit a written request, at least thirty (30) days in advance of the Commission meeting date at which the request will be heard, detailing all information required in the original application regarding the ownership, any material changes

Comment [HSPA12]: The Agency has no objections on this page.

Comment [JC13]: This provision should be moved to Reporting Requirements found at Sec. VI. B. 1. On page 19 for #2.

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Any increase in cost of \$____ dollars or more in an approved project or cost of renovation or construction or alteration of a health facility is deemed a cost overrun and must be documented and filed with the agency. (During the course of review, the reasonableness of the proposed capital expenditure will be evaluated. A reasonable contingency cost in anticipation of a possible increase in cost due to inflation or other unforeseen factors will be allowed as part of the proposed capital expenditure).¶

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to the proposed project, and identifying the tangible assets to be conveyed. A Permit of Approval, may not be transferred to a county other than the county where the current Permit of Approval is located unless authorized in the applicable methodology and an application for a Permit of Approval to the Agency in accordance with Section V – Procedures for Review is submitted,

C. PROJECTS EXEMPT FROM PERMIT OF APPROVAL PROCESS:

1. Capital Expenditures less than adopted thresholds

Projects proposed for the construction, expansion, or alteration by or on the behalf of a Health Facility, which have an associated capital expenditure of less than \$1,000,000 and do not add Health Facility beds.

2. Hospitals Licensed in Arkansas are not subject to review except when a hospital seeks to add long-term care beds or convert acute beds to long-term beds or add or expand home health or hospice services.

3. Alteration or renovation of an existing Health Facility having an associated capital expenditure of less than \$1,000,000, and not resulting in additional bed capacity. [Note: removed "conversion of services" because approval of any new/relocated ALF, NF, or hospice beds would always require review; is there any reason that alteration of business location for a home health or hospice agency needs to be approved? Further Note: The ACA only refers to nursing homes – would not include ALF, etc.]

4. The obligation of a capital expenditure to acquire duly licensed Health Facility, Home Health, or Hospice Agency, shall not require a Permit of Approval. Such an exemption applies to an acquisition by purchase, lease, donation or transfer of ownership or operational control.

5. Any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination.

6. Outpatient Surgery Centers

7. Imaging Centers

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8. Free Standing Radiation Therapy Centers

D. EXPEDITED REVIEWS

An expedited review is an exception to the normal procedures for Permit of Approval review. If a proposal meets the criteria for expedited review (See below) then that application may be submitted at anytime without regard to the published batching cycles. The Agency may take action on the proposal 30 days after notice of expedited review has been given to the public.

1. The expedited review process will be utilized if the capital expenditure is required:
 - (a) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or
 - (b) to comply with State licensure standards, or
 - (c) to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that Act, or
 - (d) to eliminate emergency circumstances that pose an imminent threat to public health, or
 - (e) to increase the cost of an approved project in order to replace remodeling with new construction.
2. Those portions of a proposed project, which do not comply with D.1. above are subject to the full review using established criteria, if that portion would otherwise have been subject to review.
3. Under no circumstances will additional beds, additional services, or expanded service areas be approved by the Agency under the expedited review process.

SECTION IV. CRITERIA FOR PERMIT OF APPROVAL APPLICATION REVIEW

A. Each applicant shall file with the Agency applications on an official forms adopted by the Commission. [Note: presently there are forms on the Agency website, but not believed to have been promulgated or adopted otherwise by the Commission.]

B. The Agency and the Commission will utilize the following criteria in the review process. [Note: this is (generally) the codified language]

1. Whether the proposed project is needed or projected as necessary to meet the needs of the locale or area;
2. Whether the project can be adequately staffed and operated when completed;
3. Whether the proposed project is economically feasible; and
4. Whether the project will foster cost containment through improved efficiency and productivity.

SECTION V. PROCEDURES FOR REVIEW

Although review procedures and criteria may vary according to the purpose for which a particular review is being conducted, the normal procedures for review of new Permit of Approval applications submitted pursuant to Section III.A. are as follows:

A. Permit of Approval Review Schedule

The Review Schedule below provides for the review of Permit of Approval applications to be considered in the same Review Cycle. Applications, which satisfy the requirements for expedited reviews, may be submitted at anytime without regard to the established Review Schedule. [Note: the present Review Cycle schedule, combined with the Commission meeting schedule results in appeals of decisions not being heard until the following quarter – could Commission meeting schedules be altered to fall in April, July, October and January (this would also avoid the Christmas Holidays and June, a popular vacation month). Alternatively, bring application due dates up a month to be submitted on the first of October, January, April and July. Appeal delays harm bank lender agreements, option agreements, etc., and the opponents already have power to delay by one quarter by right.]

Comment [HSPA15]: The Agency commented on Section V. A. The Agency does not recommend changing the review cycle schedule. Other than these two suggestions the Agency has no objections on this page.

Comment [HSPA16]: The applications have not been adopted by the Commission. For this sentence to be accurate the applications need to be revised and approval from the Commission.

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PERMIT OF APPROVAL

Review Schedule

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Application

Application Review

Agency Decision by:

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Filing Deadline: *

Cycle begins:

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November 1

December 1

February 28

February 1

March 1

May 30

May 1

June 1

August 30

August 1

September 1

November 30

*Proposed applications should be submitted no later than 4:30 P.M. on this day. This will allow the Agency one month to determine if the proposed application is complete. If the proposed application is determined complete it will be considered received and will go under review. If the application is not determined to be complete the Agency shall notify the applicant, in writing, and the Applicant shall be permitted to cure any deficiencies prior to the expiration of the time frame in which the agency determines completeness. If the Application remains incomplete on the stated review date, the Application may be returned to the Applicant. The review will not start until the application is declared complete, and official notification has been made placing the application under review. Please note if deadlines fall on a weekend, official Arkansas state holiday, or other day the Agency is closed, the deadline will be extended to the next working day.

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B. The Application/Review Process

The following are the steps of the application process, to obtain a new Permit of Approval. Each step must be completed before a decision on the project can be rendered.

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1. Application Form. The appropriate application forms must be obtained from the Agency.
2. Pre-application conference/technical assistance. If needed, a meeting will be scheduled at the request of the applicant between the applicant and an Agency representative. The meeting is to assist the applicant and to provide guidance in the preparation of the application.

3. Submission of the Application and Appropriate Review [Fees](#). The applicant is responsible for the timely submission to the Agency of an original and one (1) copy of a completed application and the review fee. The application must be signed in blue ink. The review fee is \$3,000 for all reviews. In the event that an application decision results in a hearing before the Commission, the requesting party will be charged the prevailing agency cost per page to cover the cost for the additional copies required for the hearing.

Comment [HSPA18]: The Agency has no objections on this page.

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4. Determination of completeness. The Agency will determine the completeness of the application within 30 calendar days of the scheduled submission date and, if appropriate, notify the applicant of any additional information required for the review of the proposal. The Agency may allow up to an additional fifteen days to obtain additional information.

Any proposed application that does not address substantially any one of the criteria will have the proposal returned and will not be considered for review for that cycle.

5. Information and Requirements. Applicants subject to a review must submit to the Agency any information necessary for the review. The information requirements may vary according to the type of review and/or projects being reviewed. [Originals of supporting documents may be required if the Agency has reason to question their validity](#). Please note that the Agency determination of completeness merely indicates that the questions on the form have been answered. This does not indicate that the application is approvable or that the responses to the questions are adequate or appropriate. The only additional information, which may be submitted after the filing [deadline](#), is information specifically requested in writing by the Agency. This request will be limited to information necessary to complete the proposed application. An applicant may correct a mistake in an application within the first 30 days after the application is [placed](#) under review:

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- (a) if no other application in the [Review Cycle](#) is considered as competitive; and
- (b) if the change does not effect the scope of the proposal, i.e., the change does not result in an increase in service area, services to be offered or the number of beds requested.

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6. Notification of the Beginning of a **Review**.

Comment [HSPA19]: The Agency has no objections on this page.

- (a) Written notification to Affected Persons, members of the public and third party payers will be provided through a newspaper of general circulation.
- (b) Timely written notification will also be mailed to Applicants, their legal counsel (if known), to appropriate state agencies and any person who has requested being on the Agency's mailing list.
- (c) Notification will include the proposed schedule for the review. The date of notification is the date on which the notice is sent or the date, on which the notice appears in a newspaper of general circulation, whichever is later.

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Review Period. Arkansas Code Ann. § 20-8-104 provides that the Agency must approve or deny the application within 90 days from the date the application is deemed complete and submitted for review. An application is submitted for review when the Agency has received a completed application and has so notified the applicant and the public.

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Withdrawal of Applications. All application withdraw request letters must be received in writing during the first 30 days of the Review Cycle in order to receive a refund. All Withdraw request letters received after the first 30 days of the review cycle, will be withdrawn but the fees will be nonrefundable.

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8. Availability of Reports; Methods for Obtaining Public Access. All applications under review and all other written materials essential to the review shall be accessible to the general public. The Agency will provide, upon request, notification of the status of reviews, findings, and other appropriate information. Depending on the amount of material requested there might be a charge for copying.

9. Opponents Written Comments. Opponents to applications have thirty (30) days from the Public Notice of the start of the Review Cycle to submit written comments to the Agency. These comments will be considered in, and summarized in the Agency's decision. Only persons submitting this written notice of opposition to the Agency will preserve the right to appeal the Agency decision to the Commission and receive notice of the Agency decision. Applicants will be notified of these comments and will have until the fiftieth

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day of the [Review Cycle](#) to respond in writing to [opponent's](#) comments.

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10. Informal Hearing During Review. The Director of the Agency may convene an informal hearing on any application under review.

11. Agency Decision. According to Arkansas Code Ann. § 20-8-104, the Agency must approve or deny the application within 90 days from the date the [Review Cycle commences](#). The criteria that the proposed project met or failed to meet shall be set forth in written findings to the applicant. Findings will be sent via certified mail to [Applicants](#), opponents who have written a letter of opposition and also to unsuccessful [competing](#) applicants.

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12. Appeal for Hearing [before](#) the Commission.

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(a) [An Applicant](#) seeking an appeal of the Agency's decision on a Permit of Approval shall file for a hearing within thirty (30) days of receipt of the Agency's decision. [Opponents of applications that submitted a letter of opposition during the 30 day review period are also eligible to request a hearing before the Commission within thirty \(30\) days of receipt of the Agency's decision.](#) An appeal shall be written and documented on the Agency's Appeal Form for Permit of Approval Decisions. The grounds for the appeal must be indicated on the form and no additional grounds may be raised before the Commission. The form will be provided by the Agency.

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[During the Appeal process the beds will be held until after the Commission decision.](#)

(b) When [a Permit of Approval application is denied and there is an appeal](#) pending before the Commission no additional [Permit of Approval](#) applications will be placed under review for the same [type](#) service or [Health Facility](#) in the same service area until [the Commission makes its determination on the pending appeal, unless the outcome of the appeal would have no effort on the determination of new applications under the applicable methodology.](#)

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(c) Appeals to the Commission will be conducted in accordance with the State Administrative Procedure Act.

(d) Appellant(s) will present their case first. The Appellee(s) will

follow. The appellant(s) shall be given an opportunity to present rebuttal witnesses. Each side may cross-examine witnesses. (The time for cross-examination will not be counted as part of the suggested time frame). The following is the suggested time frame for appeals:

Comment [HSPA21]: The Agency has no objections on this page.

10 mins. for Opening Remarks for each side

40 mins. for presentation for each side

10 mins. for closing comments for each side
(the appellant(s) may reserve a portion of the time for rebuttal)

Each Commissioner will have a copy of the complete file. This is a part of the record; therefore, it is not necessary to introduce the application, findings, notices, etc. as exhibits in the administrative hearing.

- (e) The Commission will conduct a hearing within ninety (90) days of the agency decision and shall render its final decision within fifteen (15) days of the close of the hearing. Failure of the Commission to take final action within these time periods shall be considered a ratification of the Agency decision on the Permit of Approval and shall constitute the final decision of the Commission.
- (f) A hearing may be delayed through a continuance by the Applicant if the request is made in writing to the Agency at least (10) days before the date of the hearing. There will be no more than one continuance. This language should not be read to deny any rights guaranteed by the Arkansas Code.

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13. Ex Parte Contacts

After an application for Permit of Approval is filed with the Agency there shall be no ex parte contacts between:

- (a) an applicant or any person acting on behalf of the applicant (or holder of a Permit of Approval in a decision to withdraw a Permit) or any person opposed to the issuance (or in favor of withdrawal) of a Permit of Approval and
- (b) any member of the Commission.

An ex parte contact by an applicant or a person representing an applicant may be grounds for the withdrawal of the application from review.

Comment [HSPA22]: The Agency has no objections on this page.

NOTE: An ex parte communication is defined as oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding.

SECTION VI. CONTINUING EFFECT OF A PERMIT OF APPROVAL

A. Implementing a Permit of Approval. [Note: for replacement projects that are not impacting other persons implementing other new POA's, discuss putting responsibility on Agency to determine whether there is good cause for a project that is not completed in 24 months to continue to have a POA – Agency can request 24 month status updates and determine whether POA should be terminated due to lack of progress under the relevant circumstances.]

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1. (a) Applicants approved to construct a new facility or expand an existing facility shall have nine (9) months from the date of the issuance of the Permit (or from the date of the final judicial decision on the Permit of Approval application) to sign a construction contract or otherwise provide sufficient evidence to the Agency of construction progress.
- (b) The construction contract shall specify that the foundation for the facility will be completed within six (6) months of the signing of the contract.
- (c) The facility will be completed within eighteen (18) months from the date construction is initiated.
- (d) A license must be obtained within three (3) months from the date the facility is completed.
2. In the event that the Applicant is unable to provide sufficient evidence to the Agency of construction progress, the Applicant will be required to appear before the Commission and present "good cause" justification for the present status of the implementation of the project. If the Commission determines that the construction progress is insufficient the Permit of Approval will be terminated. If the project is not completed and a license obtained within thirty (30) months of the issuance of the Permit of Approval, the Permit must be terminated by the Agency. Appeals of the termination will be made to the Health Services Commission within thirty (30) days of notice of termination.

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Notice of the termination of a Permit will be through certified letter to the holder of the Permit. Notice of hearings on appeal of the termination will be by mail to the holder of the Permit and affected parties and legal notice in a newspaper of statewide coverage.

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3. Extensions – The Commission may approve a request for extension of time if good cause is presented. Any request for an extension must be made in writing to the Agency prior to the expiration of the date on which the phase or project was to be completed. Under no circumstances will an extension be granted for more than six months at a time. An applicant may request subsequent extensions. What other limitations to increase the requirement for multiple extension requests.

4. Applicants that have made a preliminary application for a HUD insured loan on or before the 90th day following the issuance of their POA and have not received an approval from HUD by the start of the eighteenth month following the issuance of the POA may receive an extension of the POA from the Agency for up to an additional six months. Commission review is not required. In order to receive the extension the applicant must provide the Agency with a letter from HUD documenting: 1) the date of preliminary application and 2) that the delay in approval was not due to inaction or delays by the applicant. This request for an extension on the POA must be made at least three weeks prior to the end of the eighteenth month.

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5. Projects not requiring construction or renovation must be licensed within one year of the date of the Permit of Approval (or within one year of the date of the final judicial decision on the Permit of Approval application).

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6. After project approval, if the applicant wishes to change the approved project, the proposed changes are subject to Permit of Approval if they are such that in themselves they would be subject to review. If an applicant proposes a change that was a significant reason for the approval of the project then that proposed change must go before the Commission to determine whether the change shall require review.

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7. A Permit of Approval once issued to an approved applicant is not transferable to any other institution or party without approval of the Commission.

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76. Extensions – The Commission may approve a request for extension of time if good cause is presented. Any request for an extension must be made in writing to the Agency prior to the expiration of the date on which the phase or project was to be completed. Under no circumstances will an extension be granted for more than six months at a time. An applicant may request subsequent extensions. What other limitations to increase the requirement for multiple extension requests.

B. REPORTING

1. It will be the sole responsibility of the applicant to keep the Agency informed of its progress during the approval period. Documentary evidence of the signed construction contract, the construction of the foundation and the application for licensure must be submitted to the Agency. A progress report to the Agency on the project is required at the time the construction contract is due, at the time the foundation is due to be completed and every six months after that until the project is licensed. Failure to submit these progress reports may result in the approved party having to appear before the Commission to show cause why the permit should not be terminated.

2. Cost Overrun

Any increase in cost of twenty-five percent or more in an approved project or cost of renovation of construction of alteration of a Health Facility is deemed a cost overrun and must be documented and filed with the agency and may become subject to the additional review that may be imposed per Section VI.A.5. (During the course of review, the reasonableness of the proposed capital expenditure will be evaluated. A reasonable contingency cost in anticipation of a possible increase in cost due to inflation or other unforeseen factors will be allowed as part of the proposed capital expenditure).

C. TERMINATION OR SURRENDER OF A PERMIT OF APPROVAL OR LICENSE:

Any increase or decrease in beds or services due to the expiration, termination, revocation, or surrendering of a permit or the expiration, termination, revocation, or surrendering of a license must be recorded by the Agency and published at least sixty days prior to the deadline for filing applications for a Review Cycle in order to be considered in the Review Cycle.

SECTION VII. EXCEPTIONS TO USE OF PROCEDURES

A. The Commission may approve an exception to any of the required review procedures by a favorable 3/4 (75%) vote of the Commissioners hearing the exception request.

B. In approving a general exception the Commission will establish substitute procedures where appropriate.

Comment [HSPA24]: The Agency does not recommend publishing **TERMINATION OR SURRENDER OF A PERMIT OF APPROVAL OR LICENSE, Section C of this page. Other than that the Agency has no objections.**

Deleted: 78. The above stated timelines also apply to projects that were exempted from Permit of Approval review. The starting date for exempted projects will be the date of the exemption (e.g. exempted construction projects will have nine (9) months from the date of exemption to sign a construction contract).¶

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- C. Upon receiving a written request for an exception, the Agency will follow the notice and comment procedures and will submit copies of all comments received by the Commission with its request. Before approving the request, the Commission will:
1. review copies of the comments submitted by the Agency, and
 2. determine that the procedures to be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of Affected Persons.
- D. The Agency will distribute a notice of the approved exception and of any substitute procedures established under this Section.

Comment [HSPA25]: The Agency has no objections on this page.

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SECTION VIII. ENFORCEMENT

The Commission may authorize the Agency to enjoin the construction of existing facilities or operation of any project commenced in violation of Act 593 as amended through action filed in the Circuit Court of the judicial district in which the project is located. In addition, the Commission will instruct the Agency to contact the appropriate licensure agency and request that the licensing agency cause the facility to cease operation.

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SECTION XI. ELECTRONIC MAIL AND FACSIMILES

Fax and Electronic Copies will be accepted provided that a hard copy with an original signature and application fee is received at the Agency on or before the application due date. The Agency will not accept official correspondence via electronic mail for the purposes of letters of opposition and appeals.

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SECTION X. UTILIZATION REPORTS AND FINES

Act 1271 of 2005 as amended authorizes the Health Services Permit Agency to collect utilization statistics annually from health facilities requiring a Permit of Approval. The Agency is also authorized to impose fines on Health Facilities and agencies requiring a Permit of Approval for the failure to timely submit reports of statistics as reasonably requested by the Agency.

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The fines are:

- A. Up to one hundred dollars (\$100) for a report over thirty (30) days late;
- B. Two hundred fifty dollars (\$250) for a report over sixty days late;
- C. Five hundred dollars (\$500) for a report over ninety days late.

HSC REGULATION 500M. Assisted Living Methodology

Comment [HSPA26]: The Agency has no objections on this page.

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SECTION I - DEFINITION

- A. **ASSISTED LIVING FACILITY** means any building or buildings, section or distinct part of a building, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator. Assisted living facility includes those facilities, which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents.
- B. **ABANDONMENT** means the act of an owner/operator to discontinue the operation of a long-term care facility without the sale of that facility to a responsible purchaser, or without ensuring the placement of all facility residents in appropriate long-term care facilities prior to discontinuing operations of the facility.

SECTION II- SERVICE AREA

The term "Service Area" as used herein means the county in which the beds or facility is located or is to be located.

SECTION III- NEED

POPULATION BASED NEED

This methodology projects the need for Assisted Living beds at 30 beds per 1000 persons who are 65 [Note: current trends indicate this age should be shifted back for ALF's] years old and older. Need is projected five years forward using the most recent census data available from the UALR Institute for Economic Advancement and is reflected in the Agency's Bed Need Book. Need considers the number of proposed and existing ALF beds and the number of proposed and existing RCF beds in a county.

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An exception to the population based formula exists when occupied beds in all assisted living and residential care facilities in a county are 75% occupied by residents who are documented to be under the age of 65 years old. In this instance, beds in those facilities will not be counted in the county bed need.

OTHER NEED- ADD UTILIZATION AND REPLACEMENT?

SECTION IV- SIZE

Maximum Size

A maximum of 75 beds will be awarded to any one applicant per service area, per cycle under the population based methodology

SECTION V- UNFAVORABLE REVIEW

A. Existing long-term care facilities will have an unfavorable review if the following quality of care standards are not met:

1. No Nursing Home will be awarded a Permit of Approval for Assisted Living if the existing facility has had:

- a. Two Class A violations as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,
- b. Two Class B violations as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,
- c. A Class A and a Class B violation as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,
- d. An H level or higher deficiency, according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,
- e. The facility's Medicaid or Medicare provider agreements terminated within twelve (12) months preceding the date the application is filed with the Health Services Permit Agency.

Comment [HSPA27]: The Agency does not recommend "Utilization and Replacement" due to possibly over bedding in counties. Other than that the Agency has no objections on this page.

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2. No Assisted Living or Residential Care Facility will be awarded a Permit of Approval for additional beds, if the existing facility has had:

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a. Two Class A violations as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,

b. Two Class B violations as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency; or,

c. A Class A and a Class B violation as found in Ark. Code Ann. § 20-10-205 according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is filed with the Health Services Permit Agency.

B. An application will be denied if the owner/operator applying for a Permit of Approval has abandoned one or more long-term care facilities in Arkansas or in another state.

C. The Agency may consider an Applicant's [Note: the "Applicant" may be newly formed entity with no compliance history – this should probably be geared to the underlying ownership or manager of the entity.] compliance or enforcement history in determining whether to grant a Permit of Approval

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D. No application for beds will be approved that:

1. will cause a facility to exceed 100 beds. Any deviation will require special consideration by the Commission.

SECTION VI - REVIEW CRITERIA

1. The Agency and the Commission will utilize the following criteria in the review process.

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A. Whether the proposed project is needed or projected as necessary to meet the needs of the population, as determined by the Need methodology.

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B. Whether the project can be adequately staffed and operated when completed. Criteria include projected sources of staffing.

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C. Whether the proposed project is economically feasible.

D. Whether the project will foster cost containment.

2. Agency may require a detailed business plan that includes a narrative description with supporting data and analysis that illustrates the need for an Assisted Living Facility in the proposed service area. Data and analysis may include the following:

- Population characteristics of the market or service area by age, gender, income, morbidity, functional impairments. There must also be a narrative description of the relationship between this demographic data and the population expected to enter the proposed Assisted Living Facility.
- Market and Payor mix for intended facility.
- Proximity to other facilities including, Nursing Homes, Hospitals, or clinics.
- Current local conditions that favor the occupancy or sustainability of the proposed facility.
- Local support for the project
- Transportation access to the facility
- Resident access to other local health, recreational, or other services.
- Special needs of this community.
- Special features of this facility.

Comment [HSPA29]: The Agency has no objections on this page.

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HSC REGULATION 300M. Home Health Criteria

A. Methodology

Unless the Home Health agency is currently licensed to provide services outside of a county area, the service area of a Home Health agency is a county. Separate Permit of Approvals are required for each service area the Home Health Agency seeks to serve.

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1. Standards.

The following is the standard to be used in the review of additional or expanded home health agencies. The methodology is based on the following assumptions: 1) More populated areas tend to have a higher population density, 2) Areas with higher population density can be served with fewer staff due to reduced travel time. Thus, it will take fewer staff to serve the same number of patients in a metropolitan area than it would to serve patients in a rural area.

- a. An area with up to 30,000 population may be approved for a maximum of two agencies.
- b. A county with 30,000 to 50,000 population may be approved for a maximum of three agencies.
- c. A county with 50,000 to 75,000 population may be approved for a maximum of four agencies.
- d. A county with 75,000 to 110,000 population may be approved for a maximum of five agencies.
- e. A county with 110,000 to 150,000 population may be approved for a maximum of six agencies.
- f. A county with 150,000 to 250,000 population may be approved for a maximum of seven agencies.
- g. A county with 250,000 to 400,000 population may be approved for a maximum of eight agencies.
- h. A county with 400,000 and over population would be approved for a maximum of one agency per every 50,000 population.

2. Exception.

Approvals may be granted when the methodology does not show a need if the applicant offers documentation to prove that existing agencies are not

meeting the needs of the service area population.

Comment [HSPA31]: Number 4 looks like it was copied from the Hospice section. Change Hospice to Home Health? Other than that the Agency has no objections on this page.

- 3. Application for a change in licensure category. An agency with a "B" license that applies for a Permit of Approval to proceed with obtaining an "A" license will have to meet published criteria including the standard of need. Such approval may not exceed the standard of need unless the applicant has provided evidence to support an exception as noted in 2.

4. Applicants are required to provide a business plan including:

a. Documentation or financial support to provide cost efficient hospice care as measured by industry standards and published by the National Hospice and Palliative Care Organization or The National Association of Home Care and Hospice.

b. A potential office location in the county in which the applicant is applying for a Permit, or documentation that research into a location for an office has been done, with the amount of rent reflected in the budget. An exception exists if an applicant has a hospice office in a contiguous county; in this case, the existing hospice office can serve as the address for the new application.

c. A plan to educate physicians, hospital discharge planners and other appropriate health and social service providers about the need for timely referral of potential hospice patients.

d. Agreement to provide timely and accurate reporting data to the Health Services Permit Agency as requested.

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B. Unfavorable Review.

- 1. No application will be approved for a new home health agency or an expanded service area or change in license category if the applicant has had any condition level deficiencies in the previous 36 months as determined by the applicable state survey agency.

C. Rural Hospitals

Small rural hospitals that do not have a home health agency may be approved for a home health agency to serve either the county in which the hospital is located or the townships within a twenty-mile radius of the hospital. Small hospitals are defined as short-term acute care hospitals of 50 or fewer licensed beds. Rural counties are defined as counties with a population of 25,000 or less

in the last decennial census. Hospitals approved under this rule must have their home health agency licensed no later than twenty-four (24) months from the date of approval.

Comment [HSPA32]: The Agency has no objections on this page.

If the hospital voluntarily or otherwise loses, surrenders, or transfers its home health license, the hospital is not eligible for five years for a Home Health POA using the rural hospital designation.

This five-year prohibition would not be applicable if the hospital proves it did not have any financial gain or receive any benefit from the loss, surrender, or transfer of its home health license.

HSC REGULATION 400M. Hospice Methodology

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HOSPICE CARE as defined by state statute means an autonomous, centrally administered, medically directed, coordinated program providing home and outpatient care for the terminally ill patient and family, and which employs an inter-disciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement. The care shall be available twenty- four (24) hours a day, seven (7) days a week, and provided on the basis of need, regardless of the ability to pay.

HOSPICE PROGRAM -Hospice program is defined as a public agency or private organization or subdivision or either of these that is primarily engaged in providing care to terminally ill individuals (Code of Federal Regulations, Title 42, Volume 2, Part 418).

HOSPICE FACILITY - A Hospice Facility is defined as a facility that houses hospice beds licensed exclusively to the care of terminally ill patients but not beds licensed to a hospital, nursing home or other assisted living or residential facilities. It can provide any of the four levels of hospice care. For purposes of this application, terminally ill patients are defined according to the Social Security Act as those individuals with a terminal diagnosis and a prognosis of six months or less if the diagnosed condition runs its normal course.

I. HOSPICE AGENCIES

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This rule regulates the establishment of new hospice agencies and the expansion of existing hospice service areas. Unless the Hospice agency is currently licensed to provide services outside of a county area. The service area of a Hospice agency is a county.

A. NEED

1. The projected number of hospice patients will be 30% of the average of the total deaths that occurred in the county for the four most recent years available as calculated by the Center for Health Statistics.
2. Numeric need for a new hospice is demonstrated if the projected number of patients eligible for hospice per calendar year is 35 or greater in the proposed service area (or expanded area). The projections for the proposed area would have to indicate a need for 35 or more after the deaths for the existing hospices for the previous four quarters have been subtracted out from the total projected hospice patients.

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B. **REQUIREMENTS:**

Comment [HSPA34]: The Agency has no objections on this page.

Applicants are required to provide a business plan including:

1. Documentation of financial support to provide cost efficient hospice care as measured by industry standards and published by The National Hospice and Palliative Care Organization or The National Association of Home Care and Hospice.
 2. A potential office location in the county in which the applicant is applying for a Permit, or documentation that research into a location for an office has been done, with the amount of rent reflected in the budget. An exception exists if an applicant has a hospice office in a contiguous county; in this case, the existing hospice office can serve as the address for the new application.
 3. A plan to educate physicians, hospital discharge planners and other appropriate health and social service providers about the need for timely referral of potential hospice patients.
 4. Agreement to provide timely and accurate reporting data to the Health Services Permit Agency as requested.
- C. Regardless of numeric need, no new hospice agency will be approved unless hospice death data from the last eight quarters for each hospice agency servicing the proposed service area has been available for publishing by the Agency. This provision does not prohibit approval where a new license was granted to an Agency that purchased a hospice agency that had been serving the area for more than two years.
- D. Unfavorable Review

1. The Agency may consider an applicant's compliance and enforcement history in determining whether to grant a Permit of Approval.
2. No hospice application will be approved if the applicant has had any condition level deficiencies in the previous 36 months as determined by the applicable state survey agency unless the state survey agency has documented that the deficiency was corrected at least 12 months prior to the application submission.

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II. HOSPICE FACILITIES

This rule regulates the establishment of new hospice facilities and expansion of existing hospice facilities.

The objective of this Methodology is to ensure that an adequate supply of hospice beds are available and accessible while avoiding the proliferation of unneeded hospice facilities in the service area.

- A. APPLICATION REQUIREMENTS are based on federal guidelines including Section 1861 of the Social Security Act that states that a hospice must provide all levels of hospice care and cannot choose to only operate an in-patient facility. It must offer all levels of care including general in-patient, routine, respite and continuous care. The only eligible applicants for a Hospice Facility are those agencies that have operated a licensed Hospice Agency for at least one year prior to seeking application for a Hospice Facility.
- B. BED NEED – The calculations to determine the number of patients eligible for hospice services are the same as those found in Section I. A2.

The formula to determine the need for hospice beds is based on the federal allowance of 20% in-patient days and the Arkansas average of 5.6% in-patient days (5.2% general inpatient and 0.5% respite). The Arkansas average is rounded to 6%. The mean of 6% and 20% is 13%. This mean (13%) is multiplied times the number of projected hospice patients in the county to determine the county need for hospice beds.

Applicants can apply for a minimum of 4 beds and a maximum of 36 beds.

Applicants who have a facility and who propose to expand: (1) can not expand to greater than the maximum number of beds per county (See Bed Need Book Appendix A) and (2) can not exceed 36 beds.

Hospice need is projected five years in the future as of July 1st of each calendar year. The number of projected hospice patient deaths will be computed from the most recent Crude Death available from the Center for Health Statistics, Arkansas Dept. of Health and the most recent available population estimates obtainable from the US Census Bureau. (Changed this paragraph to the same font and size as the rest)

Comment [HSPA35]: The Agency has no objections on this page.

Question: Can the applicant (Hospice Agency) apply out of their service area for a Facility? (50 mile radius vs serving the whole county)

The answer needs to be included in the Application Requirements Section A.

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C. REQUIREMENTS:

Applicants are required to provide a business plan including the following:

Comment [HSPA36]: The Agency has no objections on this page.

1. Documentation of financial support to provide cost efficient hospice care as measured by industry standards The National Hospice and Palliative Care Organization or The Hospice Association of America.
2. A street address and city for the proposed facility in the county in which the applicant is applying for a Permit.
3. Agreement to provide timely and accurate reporting data to the Health Services Permit Agency as requested.

D. HOSPICE FACILITY EMERGENCY RULE

Hospice facilities can expand current licensed bed capacity to meet the needs of hospice patients who are displaced as a result of a declared emergency in Arkansas or in a border state. In this circumstance, hospice facilities may temporarily expand without a Permit of Approval if the following conditions are met:

- (a) Life safety will not be jeopardized for any individual.
- (b) The immediate needs of residents and other individuals sheltered at the facility can be met by the facility.
- (c) The facility maintains a log of the additional persons being housed in the facility. The log shall include the individual's name, usual address, and the dates of arrival and departure.
- (d) The admissions and discharge log shall be de-identified and a monthly report provided to the Health Service Permit Agency
- (e) The hospice facility complies with all reporting requirements of state and federal rules and regulations.
- (f) Any hospice facility that temporarily expands its capacity pursuant to this rule must revert to its Permit of Approval capacity at the end of the 120-day period.

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HSC Regulation 100M Nursing Home Bed Methodology

DEFINITIONS:

- The term "Licensed Beds" means the bed count as reflected on the current license issued by the Department of Human Services, Office of Long-Term Care.
- The term "Beds in Transition" means beds that originate from a licensed facility and are being transferred or moved to a new, existing or replacement facility in a different county and are awaiting final licensing of new construction. For purposes of projected need and the awarding of additional beds, the Beds in Transition shall be considered licensed beds in the county into which they are being moved.

I. POPULATION BASED METHODOLOGY (PROJECTED TO 2014)

- A. Population Based Methodology calculates the projected nursing home bed need using estimated population data for four age groups (see below) for a service area (county). Need is projected five years forward using the most recent census data available from the UALR Institute for Economic Advancement and is reflected in the current quarterly published Bed Need Book.

AGE GROUP BEDS PER 1000 POPULATION

Below 65	0.7
65 to 74	10.0
75 to 84	39.3
85 and above	160.0

- B. Occupancy Requirement. In order to qualify for issuance of a Permit of Approval for additional beds in the county under the Population Based Need Methodology, counties which have a projected net "need" under this section must have had an average overall occupancy of at least 90% for the most recently available occupancy as reported by DHS, and as reflected in the current quarterly published Bed Need Book.

Comment [HSPA37]: The Agency was informed by Office of Long Term Care that any licensed beds that move from one facility to another in the same county or out of the county have to be licensed to the facility that the beds are being moved to.

"Beds in Transition" are not licensed beds. The Beds in Transition shall not be considered licensed beds in the county into which they are being moved until the beds become licensed in that county.

The Agency recommends keeping the current "Beds in Transition" term.

Other than that the Agency has no recommendations.

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- C. Exceeding Projected Net Need. The Agency may exceed the projected net "need" when the projected net "need" is less than 10 beds in order to approve one applicant for a 10 bed increase.
- D. Exception to Occupancy Requirement. The Commission may disregard the overall county occupancy one time in order to approve a 70 bed facility in a county where the projected need for the county exceeds the "existing" (i.e., licensed and approved) beds by 250 or more beds.

Comment [HSPA38]: The Agency recommends under "Utilization Based Methodology" not to increase from 10% to 15% because majority of counties are over bedded. Other than that section the Agency has no objections on this page.

Deleted: (i.e., the 10 beds would not be spread over two (2) or more applicants).

II. UTILIZATION BASED METHODOLOGY

- A. Regardless of projected Need in a county, Nursing homes may acquire up to 10% of its licensed capacity or 10 beds, whichever is greater, if the applicant nursing home: Note: Since the occupancy requirement under the occupancy requirement under population based methodology is moving from 80% to 90%. Discuss increasing from 10% to 15% or 15 beds under utilization based methodology.
 - 1. Averaged 90.0% or greater occupancy according to the most recent 12 month occupancy data available from DHS as reflected in the current quarterly published Bed Need Book.
 - 2. currently has no Approved but Unlicensed Beds; and
 - 3. acquires beds from a facility that averaged 70% or less occupancy for the previous 12 month period according to the most recent 12 month occupancy data available from Dept. of Human Services as reflected in the current quarterly published Bed Need Book.
 - 4. is located in a county without a Population Based need and
 - 5. has not acquired beds pursuant to this Subsection II. A. in the previous 12 month period.

Beds may not be transferred back or returned to the original facility unless all the requirements of this section Part II. A. are satisfied.
- B. Nursing homes with less than 60 licensed beds could be approved to expand to 70 beds, if the facility:
 - 1. averaged 90.0% or greater occupancy according to the most recently available occupancy as reported by DHS, and as reflected in the current quarterly published Bed Need Book.

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- 2. currently has no approved but unlicensed beds and had ~~no~~ approved but unlicensed beds during the previous State fiscal year,
- 3. is located in a county without a Population Based “need”; and
- 4. Is not located in a county where the number of approved but unlicensed beds equals 10% or more of the county’s licensed beds in the previous 12 month period.

Comment [HSPA39]: More clarification on section B on this page. Other than that the Agency has no objections on this page.

- C. Notwithstanding the foregoing provisions of this section II but subject to section ~~V.4~~ and ~~5~~ herein, and subject to commission approval, an existing facility may relocate beds within the county where the facility is located. In doing so, the facility may either move all or some of its existing beds or the facility may acquire and move beds from another facility located within the same county.
- D. In any county where every nursing home facility in the county has an occupancy rate of at least 90.0%, and there is no population based need, an applicant may add 10% of their licensed capacity or 10 beds, whichever is greater, if the facility currently has no approved but unlicensed beds and had no approved but unlicensed beds during the previous State fiscal year.

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III. REPLACEMENT OF FACILITIES AND BEDS

- A. Qualified applicants would be applicants who propose to replace existing licensed beds with “new construction.” Existing licensed nursing facilities are eligible for replacement without respect to the need methodology.

As used in this methodology, “new construction” means the replacement of an entire licensed facility with a newly constructed facility, or the relocation of existing licensed beds into a newly constructed facility.

The relocation of existing beds for purposes of “adding on” to an existing facility, irrespective of whether the “add on” is new construction, ~~doesn~~ not qualify for approval under this Section III.

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- B. Regardless of county “need” and occupancy. Applicants may be approved for up to a 20% increase of their present licensed capacity when replacing a facility under this Subsection. Applicants may contemporaneously apply to transfer existing licensed beds within the same county to be licensed in the replacement facility but such increased beds shall not impact the calculation of 20% of existing licensed beds in the Applicant facility. Applications requesting inter-county bed movement in the initial Permit of Approval application shall not be required to present the request to the Commission because the public will be notified during the general Review

Deleted: Except as otherwise provided in this Subsection, applicants cannot combine any criteria to increase existing licensure by more than 20%. The sole exception is the case of facilities expanding up to 70 beds. This does not affect applicants, which qualify for approval under II. I. A. 1. of this methodology .

Cycle. Note: Recommend requiring facilities to acquire the additional 20% from under – utilized counties.

- C. Qualified applicants cannot combine any criteria from Section I of the HSC Regulation 100M Nursing Home Methodology to increase existing licensure by more than 20% except in the case of facilities expanding up to 70 beds. This does not affect applicants which qualify for approval under II. A. 1. of this methodology.
- D. Qualified applicants may move to another county or counties if:
1. the beds are located where “existing” (i.e. licensed and approved) beds exceed the projected county need by 100 or more beds;
 2. the number of beds being moved does not exceed the projected net need of the county (or counties) to which the beds are being moved and;
 3. the moved beds are used for “new construction” and
 4. the occupancy for the county to which the facility or beds are being moved has had an average overall occupancy of 80% or more for the most recently available occupancy as reported by DHS.

Comment [HSPA40]:

1.) Under “IV Application Approval Priorities” letter “A” the Agency recommends to keep the current section in the Rulebook. (Section I and III) Sec. I Population Based Sec. III Replacement Facility w/ 20% increase of its licensed beds. Section I refers to population based need currently there is 2 counties that has a need (70+ net need) therefore not many applications are submitted for population based.

2.) Section IV. A. “any unsuccessful Applicant may elect to request the Agency maintain the Application for review during the next Review Cycle” The Agency does not recommend this statement. All unsuccessful applicants reapply with their application fee.

Other than that section the Agency has no objections on this page.

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IV. APPLICATION APPROVAL PRIORITIES

- A. In any one Review Cycle, for all applications submitted under Section I of this methodology, only one (1) application may be approved for each county. If more than one (1) Section I application is made any unsuccessful Applicant may elect to request the Agency maintain the Application for review during the next Review Cycle.
- B. When making a decision on applications submitted for the same county in the same Review Cycle, additional beds available (according to the county’s projected net need) will be awarded in the following ranked order:
1. Beds available shall first be allocated to applicants who propose to add beds to an existing licensed facility whose facility had a 96.0% average occupancy rate or greater for the most recently available occupancy as reported by DHS, provided all requirements for approval of the application(s) are met.

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Deleted: B. With respect to applications submitted under section II, one application per county may be approved per review cycle, in addition to the one (1) application to be approved as described in section IV. A.

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Maximum Beds awarded pursuant to this first priority shall be either a number of beds equivalent of up to a 10% increase in the facility's existing number of licensed beds or 10 beds, whichever is greater.

Comment [HSPA41]: The Agency has no objections on this page.

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The maximum number of beds awarded to existing facility applicant(s) pursuant to this priority in a single review cycle shall be 35.

2. Beds available shall next be allocated to applicants who propose to add beds to an existing licensed facility under Utilization Review, Section II, provided all requirements for approval of the application(s) are met.

Beds awarded pursuant to this first priority shall be either a number of beds equivalent of up to a 10% increase in the facility's existing number of licensed beds or 10 beds, whichever is greater. This paragraph (2) is not intended to require a county to have a projected net need to qualify for a Section II increase but rather is intended to ensure that if there is an increase approved in that Review Cycle, the additional beds awarded will be deducted from any projected net need before any other application with lesser priority is approved;

3. Remaining beds available shall next be allocated to applicants who propose to replace facilities pursuant to Section III, the Replacement methodology, who are eligible for a 20% increase in their licensed capacity; this paragraph (2) is not intended to require a county to have a projected net need to qualify for a Section III 20% increase but rather is intended to ensure that if there is a 20% increase approved in that Review Cycle, the additional beds awarded will be deducted from any projected net need before any other application with lesser priority is approved;

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4. Remaining available beds shall next be allocated to applicants who have an existing facility with less than 70 beds who are proposing to expand to 70 beds. These applicants may be approved for a number of additional beds necessary to enable them to expand to 70 beds. However, if these applicants have less than 70 beds and more than 60 licensed beds they may be approved for up to a 10 bed increase.

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5. Remaining beds available shall next be allocated to applicants proposing to construct a new facility which the Agency finds meet all criteria for approval.

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V. UNFAVORABLE REVIEW

A. An application for a Permit of Approval under the HSC Regulation 100M Nursing Home Methodology will be denied if it:

Comment [HSPA42]: The Agency has no objections on this page.

1. Does not agree to eliminate all units of three (3) or more beds in the applicant facility, ; except, A facility may have units of three (3) or more beds only in order to comply with specific regulations for intensive care, Alzheimer's disease, and/or sub-acute care units (pertinent regulations to be promulgated by the Department of Human Services, Office of Long-Term Care),
2. is for an applicant home with current life threatening compliance issues that could not be corrected by the proposed construction, or
3. is for any nursing home found to have had an H level deficiency or higher by the Office of Long Term Care in the twelve (12) months preceding the date the application is placed under review or from the date the application is placed under review until the final decision of the Commission. This section is intended to prohibit the expansion of existing facilities with a history of serious non-compliance. This section, however, shall not apply to applicants under Section III who are replacing older facilities.
4. will cause a facility to exceed 140 beds, or
5. will create a facility with fewer than 70 beds
6. would create an under-served area. The Commission will make this determination.
7. is located in a county where the number of Beds in Transition and Approved but Unlicensed beds equals 10% or more of the county's licensed beds in the previous state fiscal year. e.g. if in 1997 County "A" had 140 licensed beds with a 28 bed approval then the facilities in County "A" would not be eligible for additional beds under either the Population Based or Utilization Based methodology. The rationale is that an increase in beds would have affected occupancy.

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B. An application for a POA will be denied if the owner/operator applying for a Permit of Approval has abandoned one or more long-term facilities either in Arkansas or in another state.

C. The Agency may consider an applicant's compliance and enforcement history in determining whether to grant a Permit of Approval.

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NOTE: Occupancy data on Medicaid certified facilities will be based on the report supplied by the Department of Human Services, Division of Medical Services to the Health Services Permit Agency. Occupancy data on facilities that did not report to the Department of Human Services, Office of Long-Term Care will be based on the survey conducted by the Health Services Permit Agency. (Non-reporting facilities include facilities without Medicaid beds and those facilities which changed ownership during the previous calendar year.)

Comment [HSPA43]: There are no Life Care Nursing Facilities in the State of Arkansas. The Agency has no objections on this page.

VI. Lifecare Nursing Facility

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The Arkansas Health Services Commission and the Arkansas Health Services Agency amend their rules, policies, and procedures in relation to applications for long-term care facilities as follows:

- A. Continuing care providers, as established by the Arkansas General Assembly and codified in A.C.A.23-93-101 - 23-93-114 and regulated by the Arkansas Insurance Commissioner, shall be governed by the statutory and regulatory provisions relating to applications for long-term care facilities.
- B. Continuing care "life care providers", as established by the Arkansas General Assembly and codified in A.C.A. 23-93-201 et seq., regulated by The Insurance Commissioner of Arkansas and requiring no additional charges for nursing care or personal care services beyond those charged all residents of the facility who are not receiving nursing care or personal care services, shall be governed by statutory and regulatory provisions relating to applications for long-term care facilities, except:
 - 1. After issuance of a license by the Department of Insurance as a "life care provider", the life care provider may apply for a Permit of Approval for a nursing facility based on one bed per ten constructed, licensed units occupied by bona fide residents upon a signed agreement that no individual will be directly admitted to the nursing facility who has not been a bona fide resident of the life care provider.
 - 2. (i) Additional beds for the life care provider nursing facility may be requested on an annual basis, provided it is in compliance with and has a current license from the Department of Insurance and the Office of Long Term Care, based on one bed per additional ten constructed, licensed units occupied by bona fide residents of the life care provider which have been constructed, licensed, and occupied by bona fide residents and in existence for at least twelve

(12) months from the last application under this sub-section, and based on the occupancy of the nursing facility during the previous twelve months, requiring the previous twelve months, until the nursing facility reaches a total of seventy (70) beds, and provided no individual has been admitted to the nursing facility who had not been a bona fide resident of the life care provider. The life care provider shall furnish the Health Services Agency all information requested to substantiate the application. or

Comment [HSPA44]: The Agency has no objections on this page.

(ii) Additional beds for the life care provider nursing facility may be requested:

(a) In accordance with the general regulations applicable to nursing facilities in this methodology, or

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(b) on an annual basis, if no new constructed, licensed units have been added to the life care provider, based on the utilization of the nursing facility during the previous twelve months, requiring seventy percent (70%) occupancy over the previous twelve months, and shall entitle the life care provider, provided it is in compliance with and has a current license from the Department of Insurance and the Office of Long Term Care, to an additional ten beds, or ten percent (10%), whichever is greater, until the nursing facility reaches a total of seventy (70) beds, provided no individual has been directly admitted to the nursing facility who has not been a bona fide resident of the life care provider. The life care provider shall furnish the Health Services Agency all information requested to substantiate the application.

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(iii) Only one of these methods may be used in a calendar year.

3. Should the life care provider's license be revoked by the Arkansas Department of Insurance, this Commission shall recommend to the Office of Long Term Care that the nursing facility lose its license to own and operate a nursing facility. Should a life care provider nursing facility directly admit residents who have not been bona fide residents of the life care provider to the nursing facility, the life care provider shall not be allowed to apply for new beds for a total of five (5) years.
4. The nursing facility or beds of a life care provider shall not be sold or transferred to any other entity. Any sale or transfer shall

automatically forfeit the license of the facility or beds and bar the life care provider from applying for additional beds for ten (10) years.

Comment [HSPA45]: There are no Life Care Nursing Facilities in the State of Arkansas. The Agency has no objections on this page.

5. Notwithstanding, all life care nursing facility beds shall be counted when computing overall bed need for a county service area.

**HSC Regulation 110M. Psychiatric Residential Treatment Facilities (PRTF)
Bed Need Methodology.**

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DEFINITION: "Psychiatric residential treatment facility" means a residential child care facility in a non hospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a physician licensed by the Arkansas State Medical Board who has experience in the practice of psychiatry, for children who are emotionally disturbed and in need of daily nursing services, physician's supervision, and residential care, but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital. Act 2234 of 2005

I. Population Based Methodology

A. Projection Time Frame. Each July 1st bed need will be projected five years from the current year, i.e., July 1, 2006 projections will be made for the year 2011.

B. Service Area is by PRTF Area.

Area 1	Area 2	Area 3	Area 4	Area 5	Area 6
<i>Counties</i>	<i>Counties</i>	<i>Counties</i>	<i>Counties</i>	<i>Counties</i>	<i>Counties</i>
Benton	Clay	Saline	Clark	Arkansas	Mississippi
Carroll	Craighead	Pulaski	Garland	Cleveland	Poinsett
Madison	Greene	Lonoke	Hot Spring	Grant	Cross
Washington	Lawrence	Prairie	Montgomery	Jefferson	Crittenden
Crawford	Baxter	Pope	Pike	Lincoln	St. Francis
Franklin	Woodruff	Yell	Calhoun	Ashley	Lee
Logan	Randolph	Johnson	Columbia	Bradley	Phillips
Polk	Cleburne	Faulkner	Dallas	Chicot	Monroe
Scott	Fulton	Conway	Nevada	Desha	
Sebastian	Independence	Perry	Ouachita	Drew	
Searcy	Izard		Union		
Boone	Jackson		Hempstead		
Marion	Sharp		Howard		
Newton	Stone		Miller		
	Van Buren		Lafayette		
	White		Little River		
			Sevier		

C. Bed Need Formula.

1. 1.001 beds per 1000 persons age 6-17
.78 beds per 1000 persons age 18-21
2. Before additional beds may be approved existing PRTFs must have averaged 80% occupancy for the previous calendar year.

D. Review Priorities. Applicants will be approved in the following ranked order:

1. Existing PRTFs that are transferring beds.
2. Existing PRTFs wishing to expand and replace an older facility.
3. Applicants for new PRTFs in sections of the State that are more than one and a half hours travel time from existing PRTFs.
4. Applicants for new PRTFs.

Comment [HSPA46]: The Agency has no objections on this page and also refer to note below.

II. Transfer of Beds [Note: it is unclear whether a transfer is a transfer to another operator or simply a relocation of existing beds by the same licensed operator.]

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An existing PRTF may apply to transfer beds if the applicant:

- is fully licensed, is in good standing and has no pending adverse action before its licensing board
and
- is transferring to an existing facility or a newly constructed facility in which capacity is available and is fully licensed, is in good standing and has no pending adverse action before its licensing board
and
- the number of transferred beds does not exceed the net need of beds for that area or the applicant submits rationale for the transfer that demonstrates that the transfer will (1) improve the quality and access to care for the region to which the beds are being transferred, (2) will meet and unmet need in the region and (3) will not significantly impact the quality of an care or access in the region from which the beds are being transferred.
and
- submits an operation and finance plan that is economically feasible
and

- documents ability to adequately staff the facility.

Any such facility requiring an expenditure of \$1,000,000.00 or more shall require an application for an award of a Permit of Approval.

Comment [HSPA47]: The Agency has no objections on this page.

III. Relocation of Beds

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An existing PRTF may apply to relocate beds if the applicant:

- is fully licensed, is in good standing and has no pending adverse action before its licensing board
and
- is transferring to an existing facility or a newly constructed facility that the PRTF will either own or lease
and
- the number of transferred beds does not exceed the net need of beds for that area or the applicant submits rationale for the transfer that demonstrates that the transfer will (1) improve the quality and access to care for the region to which the beds are being transferred, (2) will meet and unmeet need in the region and (3) will not significantly impact the quality of an care or access in the region from which the beds are being transferred
and
- submits an operation and finance plan that is economically feasible
and
- documents ability to adequately staff the facility.
- Any such newly constructed facility requiring an expenditure of \$1,000,000.00 or more shall require an application for an aware of a Permit of Approval.

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Unfavorable Review

The Agency may consider an applicant's compliance and enforcement history, both in Arkansas and out of state, in determining whether to grant a Permit of Approval.

IV. Moratorium

Beginning February 1, 2008, there will be a moratorium on the construction or addition of any additional PRTF beds beyond the current number of permitted and licensed beds for the State. Applications for additional beds will not be accepted during the moratorium.

HSC Regulation 200M Residential Care Facility (RCF) Methodology

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I. Residential Care. Definition.

All references to "Residential Care" and "Residential Care facilities" refer to facilities that meet the definition contained in Act 1238 of 1993, which states:

"(14) 'Residential care facility' means a building or structure which is used or maintained to provide, for pay on a twenty-four hour basis, a place of residence and board for three (3) or more individuals whose functional capabilities may have been impaired but do not require hospital or nursing home care on a daily basis but could require other assistance in activities of daily living."

Residential Care facilities also include:

Any other facility, which meets the statutory definition regardless of licensure category or the existence of a licensure category.

II. Service Area will be the county.

III. Bed need will be determined by a Population Based methodology and a Utilization Based methodology.

A. Population Based

1.a. Numerical Formula. At 90% optimum occupancy the following number of RCF beds are projected by Age group:

Age Group	Beds per 1000
Under 65	.5545
65-74	2.3014
75-84	5.1090
85+	17.4996

Bed need will be projected five years forward each July 1st, e.g., in 2003 bed need will be projected for the year 2008.

1.b. An exception to the population-based formula exists when occupied beds in all facilities in a county are 75% occupied by residents who are documented to be under the age of 65 years old. In this instance, beds in those facilities will not be counted in the county bed need.

2. Review Priorities. Applicants will be approved in the following ranked order:

Comment [HSPA48]: The Agency has no objections on this page.

- a. Applicants with high occupancy will have a priority for an increase of 10% or 10 beds whichever is greater. (For definition of "high" see "B. Utilization Based" below.)
- b. Applicants replacing "older" facilities will have a priority for a 20% increase.
- c. Applicants wanting to expand will have a priority for an increase of 5% or five beds whichever is greater.

The above priorities may not be combined i.e., an older facility with "high" occupancy will be eligible for either a 10% or a ten bed increase or a 20% increase but not both.

No additional beds will be approved for a county showing a need under the Population Based Methodology where:

- (1) there is a valid POA for the first RCF in the county which has yet to be licensed; or
- (2) if the county has had its first and only RCF licensed within the last calendar year. After the initial RCF has been licensed for six months, the Commission will review the situation and determine if additional beds will be approved for the county.

3. The Commission may exceed "need", when a need exists and is less than ten (10) beds in order to approve one applicant for up to a ten (10) bed facility.

B. Utilization Based.

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This methodology would apply in those service areas where a Population Based Need is not projected. Beds may be approved if:

1. a facility has had a "high" occupancy for the previous calendar year. "High" occupancy shall be at least an average of 85% for facilities of

ten beds or less, 90% for facilities of 20 beds or less and 95% for facilities over 20 beds. Proof of occupancy will be based upon resident occupancy. Proof of occupancy is derived from the DHS, OLTC occupancy reported at the last two (2) site visits and is averaged with the occupancy reported on the site visit conducted by the HSPA. Occupancy is defined as including any individual for whom the facility has agreed to provide room or board, or services or assistance, regardless of whether they are physically present at the time the occupancy is counted.

Comment [HSPA49]: The Agency has no objections on this page.

Eligible applicants may be approved for a ten bed increase.

C. Unfavorable Review

- a. No Residential Care Facility will be awarded a Permit of Approval if the existing facility has had more than two (2) Class A or Class B violations pursuant to ACA § 20-10-205 in any inspection within the last 12 months preceding the date the application is placed under review or from the date the application is placed under review until the final decision of the Health Services Permit Commission.

~~Deleted:~~ permit

~~Deleted:~~ approval

III. Act 1230 of 2001

- A. Act 1230 of 2001 created the Assisted Living Program and allows Residential Care Facilities that were licensed or holding a Permit of Approval as of the effective date of the Act and subsequent purchasers to be licensed as assisted living facilities subject to the provisions of the Act and without a Permit of Approval.

IV. Moratorium

- A. Beginning July 1, 2005, applications for construction of new residential care facilities will not be accepted, including applications for replacement facilities, additional beds or to expand existing bed capacity.
- B. However, applications for replacement of facilities of 16 beds or fewer will be accepted if the number of beds required for replacement is less than or equal to the number of beds for which the residential care facility was licensed before the application for replacement.

ICF/MR MORATORIUM

Comment [HSPA50]: The Agency has no objections on this page.

HSC Regulation 005 Moratorium on Intermediate Care Facilities for the Mentally Retarded, ICF/MR)

Comment [JC51]: Delete input correct term

As authorized by Act 593 of 1987, as amended, the Commission proposes to retain the moratorium on the acceptance of Permit of Approval applications on proposals to add ICF-MR or any other long term care facility beds for which there is not an adopted review standard of need. (March 1994)